

CITY OF METHUEN COMMUNITY DEVELOPMENT BOARD

Executive Session

Wednesday, April 11, 2018, 6:00 P.M.

Mayor's Office, 3rd Floor – SEARLES BUILDING
41 PLEASANT STREET – METHUEN, MA 01844RECEIVED
CITY CLERK'S OFFICE
METHUEN, MA
2018 JUN - 7 PM 12:38**MINUTES**1) **Call to Order of Regular Meeting.**

Chairman Joseph Leone called the meeting to order at 6:00 pm.

2) **Members in Attendance**

Joseph Leone, Chairman	Present
Charles Perrault, Vice Chairman	Present
Frederick Fairburn, Secretary	Present
Marc A. Angelone, member	Present
Brian Boes, member	Present
Julie Brady, member	Absent

Others in Attendance

Kathleen Colwell, Assistant Director of Planning
 Nancy Hudson, Community Development Confidential Secretary
 Carolyn Murray, Counsel to the Community Development Board
 Paul Fahey, Chief of Staff to the Mayor

3) **Executive Session** pursuant to G.L. C. 30A, Section 21(a)(3) to discuss strategy with respect to litigation in the matter of Colchester Properties v. Community Development Board, Land Court Case No. 16 MISC 000461

Paul Fahey introduced himself to the Board and stated that the Mayor had asked that he represent him this evening. He explained that he had a history of working with the Mayor when he was a senator and in public safety and he has been a public official himself in Watertown, including as a Planning Board member, so he's aware of the role that the Board plays and he's appreciative of that.

Mr. Fahey wants to make sure that everyone is on the same page and has the same expectations. Traditionally Bill Buckley would be here but he's in a situation where there is a conflict of interest, so he's not here. Carolyn Murray from Kopelman and Page Law is representing us for the Solicitor's Office and the Mayor has asked Mr. Fahey to sit in for him tonight on his behalf.

Mr. Fahey continued, on the Colchester Properties issue, the Mayor has been looking at this a lot since he came into office. He has done his due diligence about the project and about the work that's been done, and he's very appreciative of the work that the Board has done. It's been a long process leading up to this point, with controversy, and obviously it's subject to litigation, which is why we are in executive session. The Mayor has come to the conclusion that he would like to settle this. He has a philosophy about using resources for legal representation, that while necessary, he would like to try to minimize where possible. He also feels that despite some of the history and despite some of the issues that are before the Board, that the Board has been addressing with a lot of work and a lot of thought, he has a comfort level with the project going forward, not at the 15 units that was originally proposed, but a number closer to that than what he understands was the last number that was discussed around mediation, which was 10. The number that he's looking for support for is 13 units. So, that is his feeling. He understands that he cannot order the Board to do anything, but he did want it transmitted to the Board that it would be his position moving forward that he will only fund legal expenses related to the cost of settlement of the case, not for continuing to pursue the case in court. Carolyn Murray is here and we're happy to answer any questions that the Board may have and talk about what the process might be.

Carolyn Murray stated that Attorney Fairburn had asked on the way in about the motion for summary judgement and the status of that. The Board may remember that after the mediation, we went forward and filed a motion for summary judgement with respect to the LID ordinance. We argued that it should be void because it's vague; because it didn't provide any real parameters or benchmarks, by which you could say, for instance, provide 5 LID techniques and get a bonus of density of 5%, or something like that. There was no formula built in. That motion is pending with the court. Colchester Properties has not only opposed our motion, but they filed a cross motion, claiming that not only is the LID ordinance valid and provides perfect clarity that the Board could have approved the subdivision but furthermore the Board should have approved the subdivision. That has been pending with the court and it's scheduled for hearing on May 2nd. After being informed by the Mayor that he was interested in resolving the case, and having further discussion with the Board about doing that, we did explain to the Mayor that we're in this position where the wheels of the litigation are moving forward and if the Mayor did not want to spend further money on legal fees, then we would ask to have the proceedings at least stayed or at least continued, to give us some time to work this out. The last request for a continuance was denied by the court and the court basically said if you're going to settle it, go ahead and settle it, but if you're not going to settle it, we want to see you on May 2nd for a hearing, or you could also file a motion for remand, which would be the vehicle we would pursue if there is an ability to bring this back before the Board to reach some resolution. There is a time constraint with respect to the fact that it is April 11th and Attorney Murray said that she needs to walk out of here tonight with some sort of direction in terms of what to do with the court. If the Board is open to having this come back before them, then we would have to file a motion for remand and have the court's permission for a modified application to come back before the Board. There would have to be a public hearing, a legal notice, an opportunity for the public to speak, and it would have to be a whole new decision for the Board to issue. We don't necessarily have to work out all the details of what a plan would look like that would be acceptable to both the Board and the developer here tonight. Some of that could still be worked out through the remand hearing, but at least the remand says to the court, and it says to each other, that we are willing to get to some sort of subdivision development going into this location. If that is something the Board is open to, this is where she thinks the conversation has to begin. If it's something the Board is not open to, then we have to discuss what that means in terms of what happens to the litigation. She stated that if her instructions are to cease defending or cease prosecuting the position that we put forward, then we would likely have to withdraw our motion, which would then mean the court only has Colchester Properties motion before it, which would likely mean that they would get a judgement issued in their favor, and then the court would be instructing the Board to grant the subdivision. Attorney Murray thinks it's always better to negotiate something than be told what to do, but this is a discussion to be had.

Frederick Fairburn asked why we couldn't rest on the pleadings instead of withdrawing the motion.

Carolyn Murray responded that we could try that but Land Court doesn't generally bother to read the papers unless you show up and argue it. If it was a simpler motion they might be more inclined to, but she's not so sure they would take two opposing sides of a motion for summary judgement and decide it on the papers.

Marc Angelone asked for more explanation on a motion to remand. Would we be looking at a new plan under the LID provision that has since been removed from the bylaws? That we would be looking at it again, assuming that the LID provision is valid?

Carolyn Murray responded that we would have to because otherwise there's no incentive to Colchester to come back before the Board and there's also no way this Board could even entertain anything in the realm of 13 units or 13 lots unless the LID provision is in play because otherwise none of the lots comply with any of the zoning requirements.

Marc Angelone commented that the only benefit of doing that is to continue the conversation with them about this. When we initially denied this we looked at it under both with and without that provision. LID doesn't apply. Even if it did apply, we looked at all of it and we still denied it. He doesn't know what benefit there is to remanding it and looking at it again. He personally is not going to come to a different conclusion. It's going to be the same analysis so it seems that the only benefit of remanding it is to have more discussion about it, maybe the Board constitution is different and they vote differently if it's remanded and that Board is more willing to do something else. He asked if there's any other benefit of remanding it other than we get to keep this issue alive and get to talk about it some more.

Approved June 7, 2018

Carolyn Murray responded that for the Board, as far as the decision goes, there isn't a real benefit to the Board other than you would see your way to an amicable resolution as opposed to litigation, because we could lose. We could also win.

Frederick Fairburn noted that it would be difficult to win without counsel, who won't be funded.

Marc Angelone asked if the Mayor was willing to fund just this initial first step. He stated that he wasn't even sure if summary judgement would win. You do it, you hope it wins, maybe it does if you have a strong argument, he's not sure how often you win on summary judgement but that's just the very first step. The Mayor's Office is saying they don't care; they are not even going to give us the one day in court. Attorney Angelone noted that Paul Fahey had relayed the message that the Mayor had done his due diligence on this and Attorney Angelone asked Mr. Fahey to elaborate on what the Mayor's due diligence was. Has he watched all those open meetings; did he watch all those people speak; did he read all the minutes; has he read the regulations? He would like to know what the Mayor's due diligence was and he would like to know if ultimately the Mayor thinks the Board got it right or not. Attorney Angelone stated that is very important for him to know; if the Mayor thinks that this Board did its job and got the right answer or not.

Mr. Fahey responded that the Mayor's due diligence that was communicated to him, was that he's looked into this since he's become Mayor, that he's talked to the staff, and talked to Counsel, and he's talked to the parties and he feels that this is the way to move forward. It is not a reflection of negativity on the work that the Board did, but it is a different conclusion that he wants to move forward with, and he is going to exercise his executive authority not to have legal services continued to be provided, except for the purposes of moving to a motion to remand.

Marc Angelone responded that he understands that it's his executive privilege to fund it or not but he wonders who counseled him. If it's a losing case, why waste the city's money on it, but if it's a winning case, and if this was in his backyard, and if you ask any of those tax payers who abut this property, they'd say it's a very wise use of taxpayer money to fund a litigation, that in his own estimation, will most likely win. He would find it incredulous that a judge would find otherwise, after the Board detailed the reasons that it was denied, under both LID and conventional subdivision, and they failed at both. The Board went through every single item. The Board clearly identified that with all of the waivers they were requesting, it was a public safety concern. Attorney Angelone is stunned that the Mayor doesn't care about the public safety concerns and he would be stunned if a judge would say that the local public body doesn't know as well as the judge does, what is in the best interest and the safety of that city and overturn it. This is a very strong case that the Board has. Attorney Angelone stated that he was confused about what the Mayor used as his determination that this is a waste of money and not worth the tax payers' money to defend it. He added that it doesn't sound like the Mayor is questioning that the Board did its job and that concerns him a lot. If the Mayor thinks we got it right; if he thinks we did our job; and the first time somebody doesn't like the outcome we cave and run; we're not going to pay for it; what kind of precedent does that set, and it definitely doesn't send a good message to anyone sitting at this table that we did our job. If that's what the Mayor is going to do, if he's going to withdraw, and not go through the first step, Attorney Angelone said can't sit on a Board that does that. When he was a Naval Officer there was a clear line when we questioned whether we were doing the right and ethically correct thing to do and that was whether you would want your family to read about it in the newspaper and if you don't, then don't do it. And if the Mayor is going to withdraw funding and this isn't going forward; if he's not going to even give us one day in court, then he's going to have to submit his letter of resignation because he can't work for a Mayor who thinks that lowly and poorly of this Board. That is undercutting everything that this Board has done and he hasn't heard a good reason why the funding would be cut. It's aggravating, and Attorney Angelone can't himself, ethically and in good faith, continue on a Board that the Mayor is not going to support. He needs to tell the Board we got it wrong and tell us why because if he says the Board got it right and he's not going to defend us, he can't in good faith continue to be on this Board. There's no way he's going to serve on a Board that the Mayor doesn't support even when we get it right.

Frederick Fairburn stated that his letter will be right on top of Attorney Angelone's letter.

Brian Boes stated that his would as well.

Paul Fahey said that he will take that information to the Mayor.

Frederick Fairburn commented that once the people see this, and they are going to know exactly why this happened. We all know exactly why this happened. The Board did its homework. The Board had to vote against this project. It wasn't the right thing to do. It's still not the right thing to do and to basically blackmail the Board into remanding this under the threat of withdrawing financing and losing it — he can't believe the Mayor is doing that. He noted that he's been a lawyer for 30 years and has never seen anything quite as ugly as this, the way its being put to the Board. The only reason he would vote for remand is to give more time to get his resignation in so that a Board member can be appointed that will go along with this.

Marc Angelone noted that the Board tried to work with Colchester multiple times. The Board was willing at every step to work with them. We wasted a whole day in mediation and they came not in good faith. All they did was prolong the proceedings. The Board came up with a number much higher, double, than what he personally would have liked, and offered it up and they still came down only one or two units.

Frederick Fairburn stated that he read the motion. It's a very good motion. It's one of the best he's ever seen. It was beautiful work.

Marc Angelone commented that it seems that we are actually wasting money by pulling the plug before our day in court. We will be paying the legal bills for all that Attorney Murray has done to this point — all the motions she's done and everything she's done. How do you pay all that and we're not even going to get the benefit of all the money we've paid to this point, because we're not. We're basically saying we lose. It's May, how do you not let that motion go through?

Frederick Fairburn stated that it is one hearing.

Marc Angelone continued that if the judge thinks it's ludicrous and we will never win, then at that point make the decision that's it's a waste of taxpayer money. How do you not let the motion for summary judgement go through? It's unconscionable. It's not saving money, it's wasting money to pull the plug now. The Board spent lots of time getting this right.

Attorney Fairburn stated that when he took this job he told the then chairman that he didn't have any political aspirations. He stated that he was a resident of Methuen and he wanted to donate his time and some expertise that he would like to think he has and do the right thing. He said don't ask me to do the wrong thing, don't ask me to do anything illegal, unethical or against my conscience because he would be looking at everything from the perspective of what is in the best interest of the city. The Board went through a lot with this project. A number of members on the Board all researched this. We have four lawyers; we did legal research on it independently. We have a fifth lawyer, Kathleen, who is spectacular and we listened to what she said. We did everything we were supposed to do and conscience-wise we came to this decision. Colchester shouldn't have brought this application to us in the first place and they know it, and they know they put Bill Buckley in a bad position. They know they put everybody in a bad position because what they are asking for is something that shouldn't be done. It's not right. It's not right to do to all the people out there that have gone along with the rules for as long as they have lived there and now their entire neighborhood, which is rural America, is going to look like New York City. You have all of the people with two acre zoning, which they are paying taxes for, to say nothing of the cost of 13 houses with respect to education. It's going to cost the City tons of money, which surely nobody has really thought about. It will be 26 kids or more that will be going to a school that is already overcrowded, and now you're looking at public safety. The Board looked at all of the aspects of this. We got into engineering and all sorts of stuff and now because they are using so-called LID techniques they are telling us it will be fine. You join the Board to try to do the right thing and if you vote yes on this and you look in the mirror, you're not going to see something you like. Attorney Fairburn added that he's not in it for that. All he wants is time to get out if this is the way things will be run.

Marc Angelone asked for clarification that the decision has already been made, that the Mayor won't be funding any further legal costs other than for settlement.

Paul Fahey responded that is what the Mayor asked him to communicate to the Board.

Marc Angelone asked if he already made that decision; that he's not going to change his mind.

Paul Fahey responded that he would bring back whatever the Board's opinion is, whatever the decision is, but that is the Mayor's position at this point; he wants to settle this; he wants to try to settle at 13; he wants to

Approved June 7, 2018

remand it to the Board to continue to work through the process of making this project work, and that is the direction that the Mayor has given him, and the direction is that he will not fund additional legal costs to continue to pursue this. That is the information that Mr. Fahey wants to share.

Marc Angelone responded that Mr. Fahey had said he needs direction leaving this, and assuming that the Mayor isn't going to change his mind and he's not going to fund this going forward, he asked Carolyn Murray to repeat what the Board's options are.

Carolyn Murray replied that we could try to go forward on the pleadings. We could request that the Land Court make a decision on the papers without a hearing. With her experience in Land Court they don't do that. Land Court doesn't like summary judgement motions to begin with, never mind deciding them on a plan. She finds it hard to believe that the court would find a way to issue a decision without a hearing. In all likelihood summary judgement would not be granted. The judge would say it has to go to trial and he has to hear evidence about the water main looping and the dead end streets and other subdivisions that were granted with similar waivers requested and granted. The other option is a remand.

Marc Angelone commented that the court would let us do that and if they say no to that and we're not paying any legal bills, we are not defending it and he will win and the court will get the plan he submitted.

The Board concluded that there is essentially no difference between a 15 (with one lot not buildable) and a 13 lot plan.

Charles Perrault stated that if the funding isn't going to be there then that's the end of that so the question is would the Board rather have it remanded to us and we make the decision to create 13 lots or would we rather have the attorney settle the matter for 13 lots. He added that everybody on this board does a nice job and he hates to see people resign over this issue but he understands some of the thoughts.

Attorney Murray commented that the problem with that is Land Court judges generally gives these options, we either go to trial and a decision is granted or it's remanded back to the Board, so short of a trial she doesn't think a Land Court judge would agree to sign off on an agreement for judgement that says we are going to go from the Board having denied this project to ordering the Board to issue approval because the court is mindful of the fact that these things happen in a very public process and for a reason, so unless the judge were to say that the Board acted in an egregious, capricious way and they ignored what the ordinance called for, they won't just endorse an agreement for judgement or stipulation dismissal that orders the Board to grant the subdivision without an admission that the Board's decision was arbitrary and capricious or contrary to the zoning ordinance.

Frederick Fairburn commented that the Board is being thrown under the bus either way.

Charles Perrault stated that plenty of people settle cases because they are looking at the downside. He understands that 13 versus 15 isn't a big drop, but plenty of people settle cases because they don't want to take the risk at trial and they don't want to continue spending money. He asked Attorney Murray if she thought a judge would not sign off if the Board struck a deal at 13 lots.

Attorney Murray believes the judge would say that this would have to be remanded back to the Board for the Board to grant the subdivision at 13 lots.

Joseph Leone asked what would happen if we withdraw.

Carolyn Murray responded that if the Board withdrew she expects that Colchester Properties' motion would remain. She doesn't think they would withdraw and it's entirely possible that the judge would say the motion is granted and the subdivision needs to be approved by the Community Development Board. The plan shows 15 lots, one of which was not going to be buildable.

Charles Perrault asked if the Mayor wanted 13 or 13 with one not buildable.

Paul Fahey responded that the original was 15 with one not buildable. This would be 13 with one not buildable so it would be reduced by two.

Joseph Leone asked if he was the only one that remembers that when they were here for arbitration that they asked for ten.

Frederick Fairburn asked if the judge could award attorney's fees to the prevailing side.

Carolyn Murray responded that typically in a zoning case you can only get your costs and not attorney's fees and the other side would have to request it. She thinks that would be a point of negotiation if we withdraw our motion so that they essentially win, and we are conceding the litigation.

Charles Perrault commented that it is what it is and what's going to happen is that there will be 13 lots approved with one not buildable and if that's the case he would rather have the number of lots struck at settlement in superior court and have it remanded to the Board to decide the best 13 lot subdivision we can. He noted that everybody at this table brings a lot to the Board and he would like everyone to reconsider and stay on the Board and because of one project, deprive the City of everyone's counsel on dozens of other projects. He added that it's one of the best Boards he has been on and he would like to see it remain intact.

Frederick Fairburn stated that he thought it was a good Board too until it got undermined and had its power taken away.

Charles Perrault responded that it was unfortunate that there was a drafting issue and a petition was filed before and amendment could be made. It is what it is. He thinks the likelihood of being in a situation like this again, where there is a drafting error, and someone filed on it before and an amendment could be made is slim to none.

Frederick Fairburn stated that he would like to get by this tonight and get his resignation in. He doesn't want to vote on anything; he doesn't want to vote on 13; and he just can't do this because it just isn't right.

Marc Angelone stated that he still can't understand the Mayor's rationale for pulling funding at this point. He asked Mr. Fahey if the only reason was to be fiscally responsible.

Mr. Fahey responded that it is in part that; it is in part his belief that after looking at this project since he took office that this project is acceptable to that area. Members of the Board may disagree and he and the Mayor respect that and if any member chooses to go off the Board, he thanks you for your service and he respects that. The Mayor is not pushing anybody off the Board; if anyone chooses to leave it's your decision. He is the chief executive of the City and he's made a decision he's sharing with you, and if you need more time to digest this and make whatever response you want to make, you will have that time. Mr. Fahey stated that he's representing the Mayor and that is what the Mayor is saying.

Marc Angelone stated that if the Mayor has done his due diligence and he feels that the project is acceptable there, he would like to have a one on one with the Mayor to show him the Board's work and how they arrived at the conclusion that absolutely did not find that. Attorney Angelone would be more than happy to correct his misguided view on whether this project is appropriate because that just means that the Mayor feels that the Board at least partly got this wrong. That's the message that it sends. The board evaluated the project both ways, as a LID project and as a conventional subdivision and neither applied. Attorney Angelone stated that he doesn't do this for any purpose other than to do right by his community and if he invests his time and money on top of his paying job and this is the support he gets from the Mayor, it's unappreciated and it's a slap in the face. He will make himself available for the Mayor to say this to his face. If that's the message that is being delivered, he doesn't think he can change his mind on what he said earlier. If the Mayor cuts the funding without even letting the May motion go forward he doesn't think he can stay on the Board.

Charles Perrault clarified that he wasn't suggesting that he thinks that the Board wouldn't prevail in court. He was saying that the reason for this unusual situation is a drafting error and he doesn't think the Board would encounter that in the future. The Mayor is the chief executive officer of the City and we can choose to work with him and have an opportunity to continue to serve on the Board and that is what he is personally going to do. He understands that the recommended settlement includes 13 lots, and that the matter will be remanded to the Board with a waiver of attorney's fees.

Joseph Leone asked what would happen if it was remanded and the Board still didn't vote for it.

Attorney Murray responded that that decision could be appealed as well. One of the things that the judge said on our request for a continuance was that if we were going to file for a remand, one of the stipulations was that the court would not retain jurisdiction over this. They would consider the remand to dispose of the appeal and the new decision from the Board would generate a new opportunity for appeal.

Chairman Leone stated that he would like an opportunity to speak to his members. He asked Kathleen Colwell, Carolyn Murray and Paul Fahey to leave the room at 6:45 pm.

The Board discussed their options given the constraints that were previously presented by Mr. Fahey and continued to express displeasure that funding was stopped. The Board also expressed skepticism that there were not political motives behind the decision to withdraw the funding. The prospect of continuing the litigation with new counsel, the City Solicitor, was considered but it was not known if the City Council would give approval considering his part time status, and it was thought that he may have a conflict of interest.

Chairman Leone stated that he would like the members to stay and believes on remand the Board may be able to reduce the number of lots further. He added that he doesn't want anybody but this Board making the decision on remand.

The Board speculated on whether the case could have been won in court and agreed that not going to court in May is wasting money, not saving money, and gives an indication of what an ulterior motive might be. They wondered how much more money it would cost; Attorney Murray's time at the court; is everything prepared; does she have more preparation to do?

Carolyn Murray was asked to return to the room at 7:00 and was asked how much work she had to do for the May hearing.

Attorney Murray responded that one thing we haven't done is file an opposition to their motion, so we would have to do that. She added that the hearing itself, at least on the LID provision is pretty clear cut. There just wasn't enough there to say how this gets applied in terms of a lot density analysis. The harder part will be refuting their argument that they should have been entitled to have the subdivision approved, notwithstanding all this. She doesn't even think a subdivision approval is right for summary judgement because how do we have an argument about water main looping, the benefits or detriments of a dead end street, or whether or not they can connect into the utility easement leading out to Arrowwood. There were no depositions of experts; all we have is what the record was before the Board. We would have to put some kind of opposition together which would be a bit labor intensive and probably having to go back to the peer review consultant reports. Additionally, we don't have a lot of time to do this. She can't give a dollar amount but can't imagine it would exceed ten thousand dollars.

Attorney Murray noted that you don't usually argue a motion to remand because usually it's a joint motion. A motion to remand would mean that they would have to file a new application to show the number of lots and there would be a new public hearing, advertisement and abutter notification.

Marc Angelone asked what if we file a motion to remand and Colchester doesn't because they know the Mayor is not going to fund it. Why would they agree to a motion to remand?

Attorney Murray noted that was a valid point and Colchester could respond that way. On the other hand she stated that she doesn't know how they believe they have a strong case legally. Why wouldn't you agree to the motion to remand because they have everything to lose?

Chairman Leone commented that we are beyond deciding whether or not the case is good. We have just been given our orders and the situation is how we want to handle it.

The Board agreed that they have just been directed to settle the case and they need to decide what is the best way to do what needs to be done.

Discussion ensued about whether the Mayor wants 13 houses or 13 lots with one non buildable. The recollection was that Paul Fahey had said 13 lots with one unbuildable. Carolyn Murray recalled that he said a reduction of 2 lots. Recalling that the last number they proposed at mediation was 10, there was also discussion of a possible further reduction at the public hearing phase.

Frederick Fairburn commented that the problem he sees is that they will know that the Board won't have an attorney. Why would they agree to anything, knowing full well that if they lose at the public hearing, all they have to do is file suit, the Board won't have a defense, and they will win.

Charles Perrault reiterated that he would like the number of lots determined by the City's attorney, and attached to the remand.

Carolyn Murray explained that she doesn't think that Colchester would agree to a blanket remand because they would like to know that something that is worthwhile for them is going to be a part of it.

Brian Boes stated that he does not want to put the number of 13 in the motion for remand. He does not want to start at the high end of the number of lots.

Frederick Fairburn stated that he believes that Colchester already negotiated with our chief executive officer. He believes they already have a commitment from him for 13 houses.

Marc Angelone asked if the Mayor could talk to them. Ethically, can he talk to them? Can he talk to the other side and cut this 13 lot deal? Where did he come up with the number 13? He's not a named defendant in our case, is he?

Carolyn Murray confirmed that he is not.

Marc Angelone asked how he could be wheeling and dealing. Attorney Angelone stated that he, himself, is a named defendant, as a Board member. He asked how is the Mayor interfering in the Board's case. He added that he thinks he has a couple of calls to the Ethics Commission tomorrow. He asked what is the Mayor doing and added that he can't do that. The Mayor should have talked to the Board first and got the Board's permission to speak to the other side about cutting deals.

Attorney Fairburn agreed that would have been the proper way to go; representing the Board along with counsel.

Joseph Leone suggested that Attorney Angelone tell that to Mr. Fahey that the Mayor had no right sticking his nose in this. We have a lawyer and they have a lawyer and that's who is supposed to be doing the talking.

The Board discussed filing a motion to remand for fewer lots and what the ramifications would be. Several members believe it doesn't matter what number it gets remanded at because ultimately it comes back to the Board anyway.

Joseph Leone stated that he doesn't want to be placed in a position of voting for this project. If a judge wants to give them all of the lots so be it. The board concurred.

Carolyn Murray suggested that the Board could request a range, for example not to exceed 13 lots. The waivers must still be considered. They will still need the dead end waiver. There may be a new waiver with respect to the water main loop. They may request a sidewalk waiver. Perhaps there are more LID techniques that the Board would like to see employed that maybe makes this a little more palatable.

The Board reviewed which members had terms that were expired; those being Ted, Julie and Marc. Charlie, Brian and Joe had terms to expire 12/31/19. There is one vacancy. Joseph Leone noted that a member could only be removed for criminal wrong doing.

Carolyn Murray recommended that under the circumstances the Board look for a range. It may be dead on arrival but she would try it. She believes that 13 is the number. That's why we could try but she suspects the response will be no and then we are stuck with them not agreeing to a remand, they won't withdraw their motion, and do they know that the plug will be pulled on funding legal representation.

The Board believes that they know.

Approved June 7, 2018

Carolyn Murray recommends that the Board go for a motion for remand, and either say not to exceed 13 lots or counter with a range but it doesn't seem that the Board can get to a consensus as to what the low end would be; you make no concession as to any waivers; we make no concessions as to any LID requirements because those are things to be worked out before the Board.

Joe Leone suggested that we say 13 lots and make them all over 55.

Charles Perrault noted that if it's going to be a larger number of homes and there are no children to educate, that's the best the Board is going to be able to do.

Joseph Leone noted that only 80% can be age restricted so there could be a few owners that would be younger than 55 but the federal law that requires that also gives you the right to exclude anyone under 18.

Charles Perrault commented that this idea is clever. They might get the number they want but the City won't take it on the chin - \$7000/ per child to educate and likely at least two children per house.

Carolyn Murray commented that they could argue that the age restriction could impact the value but the Board noted the Toll Brothers 55+ projects that are starting at \$600,000.

Paul Fahey and Kathleen Colwell joined the Board at 7:35.

Chairman Joseph Leone stated that the consensus of the Board, under the circumstances, is to ask the court to remand it to the Board, not to exceed 13 lots with an age restriction of 55+.

4) Adjournment.

Chairman Joseph Leone called for a motion to exit executive session.

MOTION: Charles Perrault so moved.

SECOND: Brian Boes

VOTE: UNANIMOUS

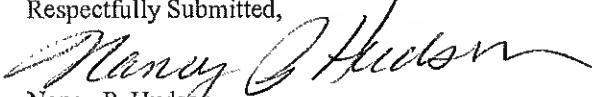
Chairman Joseph Leone called for a roll call vote to exit executive session.

Roll Call

Joseph Leone, Chairman	Yes
Charles Perrault, Vice Chairman	Yes
Frederick Fairburn, Secretary	Yes
Marc A. Angelone, member	Yes
Brian Boes, member	Yes
Julie Brady, member	Absent

Executive Session adjourned at 7:45 pm.

Respectfully Submitted,



Nancy P. Hudson
Community Development Confidential Secretary

*** NEXT REGULAR MEETING May 9, 2018 ***



Anyone needing an access accommodation to participate in City of Methuen programs or services, please contact Gene Walsh, ADA Coordinator at 978-983-8625 or GWalsh@ci.methuen.ma.us at least 2 weeks in advance, or 2 business days before any Board or Commission meeting. This notice is available in alternative formats upon request.